

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 865 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ABDUL RAZAK HAZI SULEMAN CHAKIWALA

Versus

STATE OF GUJARAT

Appearance:

MR UTPAL M PANCHAL for Petitioner
MR KT DAVE Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 25/04/2000

ORAL JUDGEMENT

1. The Commissioner of Police, Surat City, Surat, passed an order on 13.12.1999 in exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act, for short) detained Abdul Razak Haji Suleman Chakkiwala of Chok Bazar, Sindhivad,

Opp. Kabutarkhana, Surat, under the provisions of the said Act.

2. The detaining authority took into consideration two offences registered against the detenu, and also the statements of two anonymous witnesses and recorded satisfaction about the correctness and genuineness of the fear expressed by the witnesses qua the detenu and decided to exercise the powers under sec. 9(2) of the PASA Act. After considering the less drastic remedy, the detaining authority came to the conclusion that the detention under the PASA Act is the only efficacious remedy that can be resorted to in order to immediately prevent the petitioner from pursuing his illegal and anti social activities.

3. Heard the learned advocate Mr UM Panchal for the petitioner and Mr. KT Dave, learned AGP for the State.

4. The petition deserves to be allowed on a short ground of delay in forwarding the representation made on behalf of the detenu. In this regard, it may be noted that a representation was made on behalf of the detenu on December 18, 1999 which was received by the detaining authority admittedly on December 21, 1999. The order of detention was already approved on December 22, 1999. Thus, admittedly, the representation which was received on December 21, 1999 was not considered by the detaining authority on that day and even after its approval on December 22, 1999, it was forwarded to the Government on January 22, 2000 i.e. after one month. The detaining authority has filed affidavit in reply, but no explanation is tendered as to why the representation was not considered on 21.12.1999. There is no explanation coming either to show what transpired between 21.12.1999 to 22.1.2000, the day on which the representation was forwarded. This inordinate delay in forwarding the representation having remained unexplained can be said to have affected the right of the detenu of making effective representation envisaged under Article 22(5) of the Constitution of India. The continued detention of the detenu is rendered bad in law. The petition deserves to be allowed on this ground alone. In this regard, the decision in the case of Naval Shankar Dave vs. State of Gujarat & Ors., reported in AIR 1994 SC p. 1496 can be profitably referred.

5. In the result, this petition is allowed. The impugned order of detention passed by the Commissioner of Police, Surat City, Surat in respect of Abdul Razak Haji Suleman Chakkiwala is hereby quashed and set aside. The

detenu be set at liberty forthwith, if not required for
any other case. Rule is made absolute with no order as
to costs.

(A.L. DAVE, J.)

mandora/